

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

THOMAS DALE LATIN, V,	§	
PLAINTIFF,	§	
	§	
V.	§	CIVIL CASE No. 3:21-CV-1915-M-BK
	§	
DIVINEPRODUCTIONS.ORG, ET AL.,	§	
DEFENDANTS.	§	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, this case was referred to the United States magistrate judge for case management, including the issuance of findings and a recommended disposition where appropriate. Upon review of the relevant pleadings and applicable law, this action should be **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

I. BACKGROUND

On August 17, 2021, Thomas Dale Latin, a Texas resident, filed a *pro se* complaint against DivineProductions.org, his stepfather Paul Eaton, his stepbrother Johnathon Eaton, and his mother Marilyn Smith Latin Eaton. [Doc. 3 at 1](#). The complaint is difficult to decipher. Latin alleges that he is a “victim of child abuse (spiritual); sexual abuse; physical attack (mental & emotional anguish).” [Doc. 3 at 1](#). He avers that he was abused by his adoptive family members and other individuals and entities during his childhood. [Doc. 3 at 1-2](#). Latin seeks compensatory damages and for Defendants to be held responsible for their crimes. [Doc. 5 at 1](#); [Doc. 6](#); [Doc. 7](#).

Upon review, the Court concludes that subject matter jurisdiction is lacking. Thus, this action should be dismissed *sua sponte*.¹

II. ANALYSIS

The Court should always examine, *sua sponte*, if necessary, the threshold question of whether it has subject matter jurisdiction. *System Pipe & Supply, Inc. v. M/V Viktor Kurnatovsky*, 242 F.3d 322, 324 (5th Cir. 2001); FED. R. CIV. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). Unless otherwise provided by statute, a federal district court has subject matter jurisdiction over (1) a federal question arising under the Constitution, a federal law, or a treaty, *see* 28 U.S.C. § 1331, or (2) a case where there is complete diversity of citizenship between parties and the matter in controversy exceeds \$75,000, *see* 28 U.S.C. § 1332. “Under the well-pleaded complaint rule, ‘a federal court has original or removal jurisdiction only if a federal question appears on the face of the plaintiff’s well-pleaded complaint; generally, there is no federal jurisdiction if the plaintiff properly pleads only a state law cause of action.’” *Gutierrez v. Flores*, 543 F.3d 248, 251-52 (5th Cir. 2008).

The Court liberally construes Latin’s complaint with all deference due a *pro se* litigant. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (noting *pro se* pleadings are “to be liberally construed” and “held to less stringent standards than formal pleadings drafted by lawyers”); *Cf. FED. R. CIV. P. 8(e)* (“Pleadings must be construed so as to do justice.”). Even under this most liberal construction, however, Latin has not alleged facts that establish federal question or diversity jurisdiction.

¹ Because the Court lacks jurisdiction, the Court need not address the motion to proceed *in forma pauperis* and it is terminated by separate order. [Doc. 4](#).

“A federal question exists only [in] those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Singh v. Duane Morris LLP*, 538 F.3d 334, 337-38 (5th Cir. 2008) (citation and internal quotation marks omitted). The complaint in this case does not support federal question jurisdiction, as Latin does not allege any constitutional or federal statutory violation.

Moreover, to the extent Latin seeks to allege criminal law violations, his claims lack legal basis and, thus, cannot support a federal cause of action. *Doc. 5 at 1*. Criminal statutes do not create a private right of action. For a private right of action to exist under a criminal statute, there must be “a statutory basis for inferring that a civil cause of action of some sort lay in favor of someone.” *Cort v. Ash*, 422 U.S. 66, 79 (1975), *overruled in part by Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979); *see Suter v. Artist M.*, 503 U.S. 347, 363 (1992) (concluding that the party seeking to imply a private right of action bears the burden to show that Congress intended to create one). Here, Latin pleads nothing that even comes close to meeting that burden. Moreover, “decisions whether to prosecute or file criminal charges are generally within the prosecutor’s discretion, and, as a private citizen, [the plaintiff] has no standing to institute a federal criminal prosecution and no power to enforce a criminal statute.” *Gill v. Texas*, 153 F. App’x 261, 262-63 (5th Cir. 2005).

Latin’s also has failed to plead the existence of facts establishing subject-matter jurisdiction on the basis of diversity. That notwithstanding, according to online profiles, Defendant Divine Productions is located in Texas, which defeats subject-matter jurisdiction on

the basis of diversity.² See *Corfield v. Dallas Glen Hills LP*, 355 F.3d 853, 857 (5th Cir. 2003) (holding district court cannot exercise diversity jurisdiction if the plaintiff shares the same state of citizenship as any one of the defendants) (citation omitted). Because the complaint does not present a sufficient basis for federal question or diversity jurisdiction, the Court cannot exercise supplemental jurisdiction over any state law claims. 28 U.S.C. § 1367(a).

Accordingly, the complaint should be dismissed *sua sponte* and without prejudice for lack of subject matter jurisdiction.

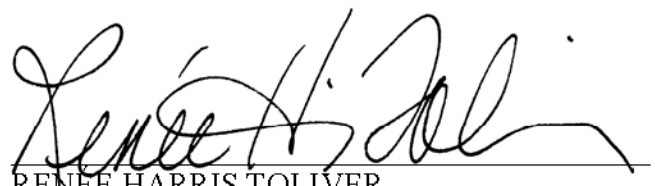
III. LEAVE TO AMEND

Ordinarily, a *pro se* plaintiff should be granted leave to amend his complaint prior to dismissal, but leave is not required when he has already pled his “best case.” *Brewster v. Dretke*, 587 F.3d 764, 767-68 (5th Cir. 2009). Here, the facts as alleged by Latin in his complaint clearly demonstrate a lack of subject matter jurisdiction in this Court. Thus, granting leave to amend would be futile and cause needless delay.

IV. CONCLUSION

For the foregoing reasons, it is recommended that Latin’s complaint be **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. FED. R. CIV. P. 12(h)(3).

SO RECOMMENDED on September 19, 2021.


RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

² See <https://www.getcompanyinfo.com/company/divine-productions/> and <https://www.buzzfile.com/business/Divine-Productions-214-506-0020> (last accessed on Aug. 19, 2021).

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). An objection must identify the finding or recommendation to which objection is made, the basis for the objection, and the place in the magistrate judge's report and recommendation the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996), *modified by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections to 14 days).